1 SUPPLY OF GOODS AND SERVICES

1.1 The Contractor must supply the Goods or Services to the Principal in accordance with the Contract.

1.2 Unless expressly agreed to in writing by the Principal's CEO and referenced in the Contract, to the extent permitted by Law, no other terms or conditions, including the Contractor's own terms and conditions even where they have been provided to the Principal or signed by a representative of the Principal, will apply or have any legal effect in connection with the supply of the Goods, the performance of the Services or the Contract.

1.3 Where the Contract relates to Goods or Services the subject of a separate written contract between the Contractor and the Principal, the terms of the separate contract also apply to the extent of any inconsistency with the Contract unless the Principal has clearly stated otherwise on the Purchase Order.

2 CONTRACTOR'S OBLIGATIONS

2.1 The Contractor must ensure that it and the Contractor's Personnel, in performing the Contractor's Obligations under the Contract:

(a) Ensure all Contractor Personnel and subcontractors and/or agents (as applicable) are properly qualified, skilled and competent in terms of fulfilling the requirements of the Goods or Services to be provided to the Principal;

(b) comply with all applicable Laws, any standards and procedures made available by the Principal to the Contractor, and any reasonable instructions given by the Principal;

(c) do not interfere with the Principal's activities or the activities of any other person at the Delivery Point or any place the Contractor provides the Services;

(d) carry out and perform the Contractor's Obligations in a safe manner in a way which does not prejudice safe working practices, safety and care of property or continuity of work;

(e) unless otherwise set out in the Contract, supply all plant, resources and equipment necessary to perform the Services; and

(f) provide all such information and assistance as the Principal reasonably requires.

2.2 The Contractor must promptly notify the Principal of any incident, injury, dangerous occurrence or material safety hazard arising in connection with the performance of the Contractor's Obligations. The Contractor must cooperate with the Principal in responding to safety matters and comply with any reasonable direction from the Principal to suspend work that presents an unacceptable safety risk.

2.3 The Contractor must promptly disclose to the Principal any actual or potential conflict of interest arising in connection with the Contract and take reasonable steps to manage the conflict as directed by the Principal. The Contractor must not offer or provide any improper payment, gift, benefit or inducement to any officer, employee or representative of the Principal.

3 RECEIPT, INSPECTION AND ACCEPTANCE OF GOODS AND SERVICES

3.1 The Contractor must deliver the Goods in full to the Delivery Point and perform the Services at the times stated in the Contract. In this respect, time will be of the essence of the Contract.

3.2 Acceptance of the Goods or Services by the Principal does not constitute approval of the Goods or Services or prejudice any claim the Principal may have in connection with the Goods or Services.

3.3 Acceptance of the Goods or Services occurs on the earlier of:

(a) a representative of the Principal notifying the Contractor in writing that the Goods or Services have been accepted; or

(b) the lapse of 14 days after delivery of the Goods to the Delivery Point without the Principal notifying the Contractor in writing that the Goods have been rejected.

3.4 The Contractor must allow the Principal or a representative of the Principal, upon 2 Business Days' written notice from the Principal and during standard business hours, to inspect, examine, review and witness tests of the Goods or Services, or the performance of the Goods or Services and to carry out site inspections at the Contractor's premises.

3.5 If the Contractor becomes aware of any matter likely to delay delivery of the Goods or performance of the Services, the Contractor must promptly notify the Principal in writing of the anticipated delay, its cause and the steps proposed to minimise its impact. Notification does not of itself entitle the Contractor to an extension of time or otherwise vary the Contract.

4 TITLE AND RISK

4.1 Title in the Goods will pass from the Contractor to the Principal upon payment of the Contract Price. The Contractor warrants that title in the Goods will be transferred to the Principal without any encumbrances or liens.

4.2 Risk in the Goods will pass to the Principal on acceptance of the Goods in accordance with clause 3.3.

5 VARIATIONS

The Contractor must not change the Goods or Services, including an addition, reduction, like-for-like change or omission to any part of the Goods or Services except in accordance with a written direction of the Principal in which case the Contractor must comply with that direction and the Contract Price will be adjusted by an amount agreed in writing by the parties.

6 INVOICING AND PAYMENT

6.1 The Principal must pay the Contract Price to the Contractor for the Goods and the Services.

6.2 The Contract Price is inclusive of all costs and expenses including packaging, freight, delivery, insurance, the cost of any miscellaneous services, compliance with the Contract and Taxes and, subject to clause 5, no additional amounts will be payable by the Principal.

6.3 Subject to clause 6.4, on or promptly after the later of the Date of Delivery of the Goods or the Date of Completion of the Services (as applicable), the Contractor must submit an Invoice to the Principal for the amount due to the Contractor.

6.4 If agreed in writing by the Principal, the Contractor may submit an Invoice to the Principal at the end of each month for any Services performed during that or previous months provided those Services have not already been included in a previous Invoice issued to the Principal.

6.5 An Invoice must include:

(a) the Purchase Order number;

(b) a description of the Goods delivered, including the quantity of Goods and the Date of Delivery; or

(c) a description of the Services performed;

(d) the amount being claimed for the Goods and the Services;

(e) the amount of any applicable GST; and

(f) any further information reasonably requested by the Principal.

6.6 If an Invoice does not contain the information required in clause 6.5, the Principal may, at its option, complete the missing details or return the incomplete Invoice to the Contractor, in which case the Contractor must submit a replacement Invoice compliant with clause 6.5.

6.7 Subject to the Contractor submitting an Invoice in accordance with clause 6.5 or a compliant Invoice in accordance with clause 6.6, the Principal must pay the amount payable within 30 days or as otherwise agreed by the parties.

6.8 Payment under this clause 6 will not be taken as proof or admission that all, or any part of, the Goods or the Services have been delivered or performed (as the case may be) to the satisfaction of the Principal, but will be taken to be payment on account only.

6.9 The Contractor agrees that the Principal may:

(a) deduct from moneys due to the Contractor any money due or which may become due from the Contractor to the Principal under, or in connection with, the Contract; and

(b) withhold payment of any amounts payable under the Contract pending resolution of any dispute.

7 GOODS AND SERVICES TAX

7.1 If GST is imposed on any supply made by the Contractor in connection with the Contract, the Contractor may recover from the Principal, in addition to the Contract Price, an amount equal to the GST payable in respect of that supply.

7.2 The Contractor must first provide the Principal with an Invoice before the Principal will pay the GST amount to the Contractor.

8 QUALITY OF GOODS AND SERVICES

8.1 The Contractor must ensure that:

(a) all Goods or Services conform to the description of the Goods or Services set out in the Contract;

(b) all Goods and Services are fit for their intended purpose and to the extent Services performed are design Services, the works being designed will be fit for their intended purpose;

(c) if the Contractor provided the Principal with a demonstration of the Services or represented that a result could be achieved by the Services before the Principles issues the Purchase Order, the Services correspond in nature and quality with the services demonstrated or the services that achieved that result (as the case may be);

(d) any Goods are new and of merchantable quality;

(e) ensure that all Goods are suitably packed (to avoid damage in transit or storage) and clearly labelled as to the contents, destination and reference number relevant to each package;

(f) strictly comply with any direction given to it by the Principal in relation to the manner of delivery of the Goods;

(g) where the Services to be performed involve the repair and/or maintenance of the Principal's equipment:

a) supply the Principal with detailed information about the repairs and/or maintenance carried out and the parts replaced, including equipment identification numbers, part numbers, VIN numbers and other information as requested by the Principal; and

b) complete any documents and/or test certificates that the Principal requests to confirm conformance to technical specifications, scope of work and any certifications provided.

8.2 The Contractor warrants that the Contractor's Personnel engaged to perform the Services have all the necessary skills, training and qualifications to carry out the Services in accordance with the Contract.

8.3 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf).

9 DEFECTS

9.1 At any time prior to the expiry of the Defects Liability Period, the Contractor must, at its cost and at the Principal's direction, promptly rectify all Defects other than a Defect caused by the negligence of the Principal.

9.2 Nothing in this clause 9 prejudices any other right that the Principal may have against the Contractor arising out of the failure of the Contractor to supply the Goods or perform the Services in accordance with the Contract.

9.3 If the Principal directs the Contractor to rectify a Defect and the Contractor fails to rectify that Defect within a reasonable time specified by the Principal:

(a) the Principal may, without prejudice to any other rights the Principal may have against the Contractor, rectify the Defect itself; and

(b) the rectification costs incurred by the Principal will be a debt due and payable on demand from the Contractor to the Principal.

9.4 Where any Defect has been rectified under the Contract, the rectification work will be the subject of an additional Defects Liability Period commencing on the date the relevant rectification works are completed.

10 CONFIDENTIAL INFORMATION, PERSONAL INFORMATION AND DISCLOSURE

10.1 The Contractor must not use any Confidential Information or disclose any Confidential Information other than to any of the Contractor's Personnel who need the information to perform the Services or deliver the Goods, to the Contractor's legal advisers or where required by Law.

10.2 The Principal may collect and use personal information provided by the Contractor or the Contractor's Personnel for the purposes of procurement, administering the Contract, processing payments and performing the Principal's statutory functions.

10.3 The Principal will handle and protect that information in accordance with applicable privacy and recordkeeping legislation.

10.4 The Contractor acknowledges that the Principal may disclose information relating to the Contract where required or authorised by Law, including through statutory payment reporting, Council agendas and minutes, public registers and processes under the *Freedom of Information Act 1992 (WA)*. Such disclosure may include the Contractor's or payee's name, payment amounts and sufficient information to identify the relevant transaction.

10.5 Nothing in the Contract prevents the Principal from making a disclosure required or authorised by Law.

11 INTELLECTUAL PROPERTY

11.1 Subject to clause 11.3, the Contractor IP remains vested in the Contractor and the Principal IP remains vested in the Principal.

11.2 The Principal will own all Intellectual Property that the Contractor creates in the performance of the Services and the supply of the Goods.

11.3 The Contractor grants to the Principal a non-exclusive, perpetual, royalty-free, irrevocable, transferable, sub-licenseable licence (with the right to grant sub-licenses on the same terms) to use the Contractor IP to the extent necessary to use the Goods and the Services.

12 INSURANCE

12.1 Where the Contract is for Goods, the Contractor must effect and maintain with a reputable insurer insurance covering the Goods against all risks of loss or damage for an amount not less than their full replacement cost, for the period during which risk in the Goods remains with the Contractor under clause 4.2, including while any rejected Goods are awaiting collection or return.

12.2 Where the Contract is for Services, the Contractor must effect and maintain with a reputable insurer the following insurance policies for the entirety of the term of the Contract:

(a) *public and products liability insurance* covering liability for damage to property and the death of or injury to any person (other than as covered under a workers compensation policy) in an amount of not less than $10 million in respect of each and every claim, unlimited as to the number of occurrences for public liability;

(b) workers compensation insurance as required by Law, including cover for common law liability for an amount of not less than $50 million for any one occurrence;

(c) *motor vehicle insurance* covering all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the Contract for loss or damage of not less than the market value and third party liability of not less than $25 million in respect of each and every claim;

(d) insurance covering the Contractor's own property, goods, materials owned, hired, leased or used by the Contractor, for an amount not less than the market value of those insured items; and

(e) any additional insurance required by an applicable Law or reasonably requested by the Principal; and

(f) where the Contractor is providing professional services, *professional indemnity insurance* of not less than $2 million for each claim and in the aggregate for all claims arising in the same insurance period, covering the liability of the Contractor for any professional services provided by the Contractor and the Contractor's Personnel under the Contract. Where this insurance is effected on a 'claims made' basis, the policy must be maintained for a period of at least 7 years after the Completion Date or the earlier termination of the Contract.

12.3 The Contractor must provide to the Principal, within 3 business days of a written request, certificates of currency for each of the insurance policies required under clauses 12.1 or 12.2 (or both, as applicable).

12.4 Subject to clause 17.4, if the Contractor subcontracts any part of the Contractor's Obligations, then the Contractor must ensure that every subcontractor effects and maintains all of the insurances required under clause 12.1 or 12.2 (or both, as applicable), as appropriate for the work being

performed by that subcontractor, before the subcontractor commences any of the Contractor's Obligations.

13 INDEMNITY AND LIMITS OF LIABILITY

13.1 The Contractor indemnifies the Principal and the Principal's officers, employees, agents and contractors for and against any claims (including third party claims) and losses suffered or incurred by any of them arising out of, or in connection with, any wrongful act or omission of the Contractor or any of the Contractor's Personnel. This indemnity will be reduced to the extent that the claim or loss is caused by the negligence of the Principal or the Principal's personnel.

13.2 Neither party is liable to the other for Consequential Loss.

14 TERMINATION

14.1 The Principal may terminate the Contract by notice to the Contractor:

(a) at any time and in its absolute discretion by giving 7 days' notice to the Contractor;

(b) if the Contractor commits a breach of the Contract and fails to remedy that default within 14 days of the Principal giving notice of the breach; or

(c) immediately if an Insolvency Event occurs.

14.2 On termination of the Contract, the Contractor must promptly return to the Principal any of the Principal's Confidential Information, property and documents which the Principal owns or in which the Principal has an interest.

14.3 If the Contract is terminated under clause 14.1(a):

(a) the Principal must pay the Contractor that part of the Contract Price for any Contractor's Obligations performed prior to termination that have not already been paid by the Principal; and

(b) the Contractor is not entitled to, and the Principal is not liable for, any additional amounts whatsoever.

14.4 Subject to clause 14.3, termination of the Contract, however it may occur, does not prejudice any claim that either party may have against the other under the Contract on termination.

15 NOTICES

Any notice or other communication relating to the Contract must be in writing, signed by the sender or its agent, and either hand delivered, sent by pre-paid post, faxed or emailed to the other party at the address, fax number or email address set out in the Purchase Order.

16 DISPUTES

16.1 Neither party may commence any action, bring any proceedings or seek any relief or remedy in a court, except interlocutory or equitable relief, from a court in respect of a dispute until they have complied with the dispute resolution process in accordance with this clause 16.

16.2 If any dispute arises between the parties in relation to the Contract, either party must give notice of the dispute to the other party.

16.3 A senior representative of each of the parties must promptly meet and attempt to resolve the dispute. If the parties are unable to resolve a dispute within 21 days of the notice referred to in clause 16.2, then either party may issue court proceedings.

17 GENERAL

17.1 The Contract states all the express terms of the agreement between the parties in respect of its subject matter. It supersedes all prior representations, discussions, negotiations, understanding and agreements in respect of its subject matter.

17.2 The Contract is governed by the law in force in Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia.

17.3 The Contractor must not assign or novate the Contract or assign any other right, benefit or interest under the Contract to any person or entity without the prior written consent of the Principal.

17.4 The Contractor must not, without the prior written consent of the Principal, which consent must not be unreasonably withheld, subcontract any of the Contractor's Obligations. Any consent to subcontract does not relieve the Contractor of its obligations under the Contract, and the Contractor remains responsible for the acts and omissions of its subcontractors as if they were its own

17.5 No term or provision of the Contract will be construed against a party on the basis that the Contract or the term or provision in question was put forward or drafted by that party.

17.6 The Contract is a non-exclusive contract for the supply of Goods or Services and it does not prevent the Principal from entering into other contracts for the supply or performance of the same or similar goods or services with other contractors.

17.7 Any provision of the Contract that is illegal, void or unenforceable will be ineffective to the extent only of that illegality, voidness or unenforceability without invaliding the remaining provisions.

17.8 If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are novated to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure.

17.9 Clauses 4, 6.8, 6.9, 10, 11, 12.2(f), 13, 14.4 and 17 survive the termination or expiry of the Contract.

18 **DEFINITIONS**

Business Day means a day other than a Saturday, Sunday, public holiday in Western Australia or 27, 28, 29, 30 or 31 December.

Completion Date means the date on which performance of the Services is completed.

Conditions of Contract means these general conditions of contract for the supply of goods and services under a purchase order.

Confidential Information means the Contract and information (regardless of its form) which is disclosed directly or indirectly by the Principal to the Contractor or Contractor's Personnel which is treated or designated as confidential, or which the Contractor or the Contractor's Personnel ought to know is confidential, but does not include information which is or becomes public knowledge (other than by the Contractor's disclosure or breach of the Contract).

Consequential Loss means any loss of production, loss or revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

Contract means the Conditions of Contract and the relevant Purchase Order or relevant Purchase Order where there is no other contract executed between the parties.

Contract Price means the price for the Goods or Services (exclusive of GST) set out in the Purchase Order.

Contractor means the contractor specified in the Purchase Order.

Contractor IP means any Intellectual Property of the Contractor (or Intellectual Property licensed to the Contractor by a third party) which:

(a) is in existence before the date of the Contract or comes into existence after the date of the Contract other than in connection with the Contract, the Goods or the Services; and

(b) which the Contractor makes available, contributes, brings to or uses in connection with the Contract.

Contractor's Obligations means all of the Contractor's obligations under the Contract.

Contractor's Personnel means the Contractor's officers, employees, agents and subcontractors and their respective employees and agents.

Date of Completion means the date on which the Services are completed in accordance with the Contract.

Date of Delivery means the date on which the Goods are delivered to the Delivery Point.

Day means a business day that is not a Saturday, Sunday, a public holiday in Western Australia or 27, 28, 29, 30 or 31 December.

Defect means any defect, error, damage, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.

Defects Liability Period means a minimum period of 12 months commencing:

(a) in respect of the Goods, on the Date of Delivery; and

(b) in respect of the Services, on the Completion Date,

and, where relevant, any additional period of time specified in accordance with clause 9.4.

Delivery Point means the place set out in the Purchase Order for delivery of the Goods or otherwise notified by the Principal in writing.

Goods means any goods, materials, supplies, equipment or other items set out in the Purchase Order.

GST means goods and services tax or similar value added tax levied or imposed in Australia pursuant to *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvency Event means in respect of the Contractor, the following events: appointment of an administrator, appointment of a liquidator, appointment of a provisional liquidator, appointment of a controller (including any receiver or receiver and manager), insolvency, bankruptcy, winding up or any event analogous to these events.

Intellectual Property means all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, including any application or right to apply for registration of any of these rights.

Invoice means any document or record treated by the Commissioner of Taxation as an invoice or as a document entitling a recipient to an input tax credit.

Law means any law in force in Australia, whether common law, equity or any law under any statute, subordinate legislation, ordinance or code.

Principal means the party ordering or receiving the Goods or Services in accordance with the Contract, being that party specified in the Purchase Order.

Principal IP means any Intellectual Property of the Principal (or licensed to the Principal by a third party) which the Principal makes available, contributes, brings to or uses in connection with the Contract.

Purchase Order means the Principal's purchase order form for the Goods or Services.

Services means any services set out in the Purchase Order, including the delivery of any goods and performance of services ancillary to the Services.

Tax means any income, land, indirect and other taxes, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST.

19 **INTERPRETATION**

In the Contract:

(a) a reference to "Goods or Services" is to be read as "Goods or Services, or both of them, as applicable";

(b) the singular includes the plural and the plural includes the singular;

(c) a reference to a clause or party of the Contract is a reference to a clause of, and a party to, the Contract;

(d) a reference to legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;

(e) the words 'include', 'includes' and 'including' must be construed without limitation as to what else might be included; and

(f) Part 1F of the Civil *Liability Act 2002* (WA) does not apply to the Contract.